

Notice of Allowability

Application No.

09/716,563

Examiner

Donald L. Champagne

Applicant(s)

FERBER, JOHN B.

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1 ☒ This communication is responsive to amendment filed on 21 June 2006.

2 ☒ The allowed claim(s) is/are 4, 10, 13-15, 17, 18, and 20-27.

3 ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4 ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____

4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

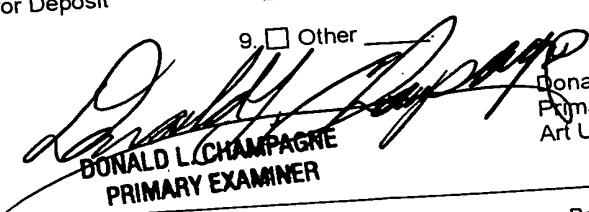
5. ☐ Notice of Informal Patent Application

6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____

7. ☒ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____


DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
Primary Examiner
Art Unit: 3622

DETAILED ACTION

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Kenie Ho, Esq., on 4 October 2006.

The application has been amended as follows: cancel claims 3, 5, 9 and 11.

Allowable Subject Matter

3. Claims 4, 10, 13-15, 17, 18, and 20-27 are allowed.
4. The following is an examiner's statement of reasons for allowance for independent claims 4, 10 and 13. The invention is a method and system for email based opt-in marketing, which allows a subscriber to select one of a plurality of ezines, and to be compensated for referring others to the marketing program. An "ezine" is interpreted as any electronically delivered periodical, including newsletters. The closest prior art, Negus (which is non-patent literature) does not teach or suggest a plurality of ezines. The closest US patent literature, Logan et al. (US005721827A), does teach providing a selection of periodicals/ezines, but the prior art does not suggest combining Logan et al. with Negus.
5. The closest prior art for independent claim 17 is WO 00/62879¹. It cannot simultaneously teach or suggest the last two limitations of claim 17, providing compensation to said webmaster for referrals to the email marketing program, and providing compensation to said webmaster for subscribing consumers. The reference teaches *stores* receiving compensation for referrals. If one interprets a store as a webmaster, which the examiner


¹ The Office action mailed on 23 March 2006 cited Sullivan (US006663105B1) as close prior art. Sullivan is the national stage of this PCT application WO 00/62879, so Sullivan and WO 00/62879 are essentially identical. It should be noted that there is an error on the first page of Sullivan and in its USPTO file. Both indicate that the PCT parent of Sullivan is a continuation of US application 09295943. That is not correct. The PCT is in fact a CIP, not a continuation, of the '943 application. For the present purposes that is moot because WO 00/62879 qualifies as prior art based on its own publication date.

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believes to be reasonable, then it would not make sense to compensate the same store/webmaster for subscribing consumers. The store is an advertiser that pays for the marketing program. The store may indeed choose to subscribe consumers, but no one will compensate the store for doing that. Indeed, said store is the entity that would ultimately be doing the compensating.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L. Champagne whose telephone number is 571-272-6717. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at donald.champagne@uspto.gov, and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 571-273-6717.
7. The examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for all *formal* fax communications is 571-273-8300.
8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DONALD L. CHAMPAGNE
PRIMARY EXAMINER

Donald L. Champagne
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Art Unit 3622

4 October 2006